

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

HOUSTON DALE NUTT, JR.

PLAINTIFF

VERSUS

NO.: 3:17-CV-130-NBB-RP

OLE MISS ATHLETICS FOUNDATION,
THE UNIVERSITY OF MISSISSIPPI, and
THE BOARD OF TRUSTEES FOR
INSTITUTIONS OF HIGHER LEARNING

DEFENDANTS

**COMPLAINT
(JURY TRIAL DEMANDED)**

Comes Now, the Plaintiff, Houston Dale Nutt, Jr., by and through undersigned counsel, and files this complaint against the Defendants, Ole Miss Athletics Foundation, The University of Mississippi, and the Board of Trustees for Institutions of Higher Learning, and would show unto the court as follows:

PARTIES

1. Plaintiff, Houston Dale Nutt, Jr. (“Coach Nutt”), is a citizen of the State of Texas. From 2008 to 2011, Coach Nutt was the head football coach at the University of Mississippi (“Ole Miss”). As is customary with departing college football coaches, on November 26, 2011, Coach Nutt and the Defendants entered into a Severance Agreement. Section 8 of the Severance Agreement prohibits the Defendants’ from making any statement relative to Coach Nutt’s tenure at Ole Miss that may damage or harm his reputation as a football coach. In keeping with Coach Nutt’s contractual obligation not to disclose the specifics of the Severance Agreement, a fully-executed copy of the Agreement, marked as “Exhibit A,” has been contemporaneously filed under seal.

2. Ole Miss competes in the Football Bowl Subdivision (“FBS”) of the National Collegiate Athletics Association (“NCAA”) and in the Western Division of the Southeastern Conference (“SEC”). As a member institution of the NCAA and the SEC, Ole Miss and the members of its Athletics Department are subject to the Bylaws and Rules of the NCAA and the SEC. The NCAA separates its schools by divisions. As a Division 1 school, Ole Miss is in the group of colleges with the largest athletics departments and whose sports teams generate the most revenues. For purposes of federal jurisdiction in this civil action, Ole Miss is deemed to be a citizen of the State of Mississippi. As an institution of the State of Mississippi, Ole Miss may be served with process through the Office of the Attorney General, The Honorable Jim Hood, at 550 High Street, Suite 1200, Jackson, Mississippi 39201.

3. The Ole Miss Athletics Foundation (“OMAF”), formerly known as the UMAA Foundation, is a signatory to the Severance Agreement. As a non-profit Mississippi corporation and for purposes of federal jurisdiction in this civil action, the Ole Miss Athletics Foundation is deemed to be a citizen of the State of Mississippi. It may be served with process through its registered agent, Keith Carter, at 201 Coliseum Drive, University, Mississippi 38677.

4. The Institutions of Higher Learning, through its Board of Trustees, is a signatory to the Severance Agreement. The Board of Trustees is the constitutional governing body of the State Institutions of Higher Learning. For purposes of federal jurisdiction in this civil action, the Board of Trustees for Institutions of Higher Learning is deemed to be a citizen of the State of Mississippi. It may be served with process through the Office of the Attorney General, The Honorable Jim Hood, at 550 High Street, Suite 1200, Jackson, Mississippi 39201.

5. The term “Control Group” appears in the Severance Agreement. In response to a request for information made pursuant to the Mississippi Public Records Act, Ole Miss informed

Coach Nutt's undersigned counsel that, with respect to the Severance Agreement, the Control Group included:

1. The Chancellor of the University of Mississippi;
2. The Director of Athletics;
3. The Senior Executive Athletics Director;
4. The Executive Associate Athletics Director;
5. The General Counsel for the University of Mississippi;
6. The Executive Director of the OMAF; and
7. The members of the OMAF Board of Governors.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction of this civil action as there is complete diversity of citizenship between the Plaintiff and the Defendants, and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs, pursuant to 28 U.S.C. § 1332 (b).

7. Pursuant to the contractual agreement of the parties, and because this case also meets the criteria set forth in 28 U.S.C. § 1391(b)(1) and (2), venue is proper in the Oxford Division of the Northern District of Mississippi.

FACTS

BACKGROUND

8. As stated on the Ole Miss website, "Houston Nutt, who was introduced as the school's 36th head coach on Nov. 28, 2007, served as Ole Miss' head coach from 2008-2011 and guided the Rebels to back-to-back Cotton Bowl wins in 2009 and 10. After guiding Arkansas to three SEC Western Division titles and eight bowl berths in his decade in Fayetteville, Nutt

immediately reversed the Rebels' fortunes and guided Ole Miss to success not experienced in Oxford in a half century." Coach Nutt left Ole Miss in good standing on November 26, 2011.

9. At all times relevant to this Complaint, Ross Bjork ("AD Bjork") was the Ole Miss Director of Athletics ("AD") and reported to the Chancellor. AD Bjork was promoted to the position of Vice Chancellor for Intercollegiate Athletics in October 2016.

10. At all times relevant to this Complaint, Kyle Campbell ("Campbell") oversaw the Ole Miss Athletics Communications Department and reported to AD Bjork. Campbell first held the title of Assistant Athletics Director and was promoted to Associate AD in November 2015.

11. At all times relevant to this Complaint, Hugh Freeze ("Coach Freeze") was Ole Miss's head football coach and reported to AD Bjork. Coach Freeze was first hired by Ole Miss in 2005 when he joined Coach Ed Orgeron's staff as the Associate Athletics Director for external affairs. Shortly thereafter, the NCAA discovered that Coach Freeze had participated in telephone calls with four Memphis-area prospects in violation of the NCAA's recruiting rules. As a result of these recruiting violations, Coach Freeze received a letter of admonishment. In 2006, Coach Freeze became Ole Miss's tight ends coach and recruiting coordinator. He held that position until Coach Orgeron was replaced by Coach Nutt in November 2007. Coach Freeze returned to Ole Miss as the head football coach on December 5, 2011 and still holds that position.

The NCAA Investigation of the Ole Miss Football Program and the Notice of Allegations

12. This action for breach of contract arises from certain false and defamatory statements made by and on behalf of the Defendants in connection with an NCAA investigation of the Ole Miss football program. The NCAA investigation began in October 2012 with a focus on potential rules violations related to the Ole Miss women's basketball team. In February 2013, while the NCAA's investigation was widening to review potential violations in the University's

football program, Ole Miss signed the highest-ranked class of football recruits in the school's history. The NCAA investigation continued through 2014 and widened further in 2015.

13. In keeping with the procedures of the NCAA following an investigation of potential violations by a member institution, the NCAA enforcement staff prepared a 47-page Notice of Allegations ("NOA") that detailed the NCAA's findings. The NOA was addressed to Chancellor Jeffrey Vitter ("Chancellor Vitter") and delivered to him on or before January 22, 2016. The NOA, a copy of which appears on the official Ole Miss website, contains 10 references to "Freeze." Houston Nutt's name does not appear anywhere in the 47-page document.

14. On January 30, 2016, in its first public statement since receiving the NOA, Ole Miss posted a statement online by AD Bjork, which included the following language: ". . . and in football, with *many* of the allegations dating back to the former football staff in 2010 and the withholding and reinstatement process around Laremy Tunsil in fall of 2015." (emphasis added). AD Bjork and other members of the Ole Miss Control Group approved the foregoing statement in advance knowing that the statement was false and misleading.

15. Based on further investigation conducted in 2016, the NCAA prepared and delivered a 30-page amended NOA to Chancellor Vitter in early February 2017. The amended NOA, a copy of which appears on the official Ole Miss website, contains 48 references to "Freeze." Houston Nutt's name does not appear anywhere in this 30-page document.

16. Consistent with the tactics it used to prevent journalists from seeing the first NOA, Ole Miss declined multiple FOI requests for the amended NOA and did not release it to the public until the University submitted its response in early June 2017.

17. On February 22, 2017, Ole Miss posted an online video presentation that included statements by Chancellor Vitter, AD Bjork, and Coach Freeze about the NCAA investigation. In

the video and the accompanying transcript, AD Bjork falsely stated: “Consistent with the NCAA’s very strict requirement of confidentiality in all investigative matters, we have not publicized any information related to this investigation before today.”

18. AD Bjork made this statement knowing it was false. Coach Freeze also knew that AD Bjork’s statement was untrue.

19. In fact, beginning in 2014, AD Bjork, Coach Freeze and Campbell had collectively violated the NCAA’s confidentiality requirements numerous times. For instance, AD Bjork knew or was reckless in not knowing that between January 21 and 31, 2016, Coach Freeze had initiated one-on-one conversations with numerous sports journalists¹ and at least four highly-rated recruiting prospects and that those conversations violated various policies of the NCAA, SEC, and the University, including the NCAA’s rules on confidentiality.

20. AD Bjork further knew that in each of the conversations referenced above, Coach Freeze had knowingly lied to the journalists and recruiting prospects by saying that the NCAA’s investigation had little, if anything, to do with him or his coaching staff and was instead focused on alleged rules violations by Coach Nutt’s staff. In some of these conversations, Coach Freeze falsely stated that most, if not all, of the NCAA’s allegations involved “Houston Nutt” and his staff. At the time Coach Freeze made these statements, he was fully aware that they were patently false, yet he continued to make such statements, severely damaging Coach Nutt’s reputation.

21. Of the 13 allegations in the initial NOA involving the football program, only two of them allegedly occurred when Houston Nutt was the head football coach. Two more violations alleged in the NOA related to alleged improper communications with witnesses and false and

¹ Plaintiff refer to these journalists herein by pseudonyms, *i.e.*, Journalist #1 through #7.

misleading statements by two former members of Coach Nutt's staff. However, these alleged violations occurred in 2013 and 2014, long after Coach Nutt had left Ole Miss. Thus, even if one could interpret the NOA to mean that four of the alleged violations occurred when Coach Nutt was at Ole Miss (which is undeniably false), 69% of the allegations in the NOA would have still occurred on Coach Freeze's watch. Not including the 2013-14 allegations (which would be two years after Coach Nutt left Ole Miss), roughly 85% of the allegations violations occurred while Coach Freeze was the head coach.

The Success and Support of its Football Program is one of Ole Miss's Highest Priorities

22. In his “State of the University” remarks on August 29, 2016, Chancellor Vitter described the importance of Ole Miss athletics to the University’s success:

Athletics is often called the “front porch” of a university. The integrity and competitiveness of our athletics program has played a big role in elevating the Ole Miss name and brand to its strongest point in school history. Through athletics, we capture the hearts of people in MS and around the country. Athletics brings them to campus, where they can experience the full richness of our great university. There can be little argument that the overall success of our athletics program is an integral part of our growth, our visibility, our ability to raise money, and ultimately our success.

“*State of the University*,” Chancellor Jeffrey Vitter, August 29, 2016.

23. A winning football team produces enormous revenues through booster contributions, increased ticket sales, bowl revenues, and high-dollar multimedia/marketing arrangements. Given these financial considerations and the others mentioned by Chancellor Vitter in his “State of the University” address, the continued success and support of Ole Miss’s football program has been, and continues to be, one of the highest priorities for Chancellor Vitter, the OMAF, and the Board of Trustees for Institutions of Higher Learning.

24. Job security is not one of the benefits of being the head coach of a Division 1 college football program. Between 2009 and 2013, more than seventy Division 1 head football

coaches lost their jobs. Notwithstanding the platitudes about the importance of football coaches supporting academic achievement, giving back to the community, and the like, the tenure of a Division 1 head football coach depends on the coach's ability to recruit top talent, win right away, and continue winning while avoiding scandals and not cheating.

25. With rare exceptions, a Division 1 head football coach who fails to meet these expectations will soon be looking for another job. That said, Division 1 head football coaches who have been replaced for not winning enough games have typically received offers from other schools who were looking for a new head coach. The job opportunities are much more limited, however, for a Division 1 head football coach who leaves under the cloud of an off-the field scandal or, worse yet, rumors and allegations that the coach and his staff were cheaters.

26. A highly successful Division 1 football program is defined by its consistency. Replacing a head football coach at a Division 1 school is both expensive and highly disruptive. For these reasons and others, the presidents and athletic directors at Division 1 schools are generally reluctant to replace a winning head football coach even when it becomes clear that the coach has fallen short in providing ethical leadership of the football program.

27. At all times relevant to this Complaint, that mindset strongly influenced the decisions made by the Ole Miss Control Group in dealing with the NCAA's numerous allegations of recruiting violations by Coach Freeze and his staff. Indeed, the protection of Coach Freeze became the University's number one priority in dealing with the NCAA investigation.

Late 2014: Ole Miss Commences its False and Defamatory PR Campaign

28. Determined to deflect and delay the potential damage from the NCAA investigation, and with the knowledge and tacit approval of certain members of the Ole Miss Control Group, Coach Freeze, AD Bjork, and Campbell reached an agreement in 2014 to carry out

a carefully orchestrated misinformation campaign, the specific purpose of which was to mislead the media, Ole Miss boosters, and potential recruiting prospects about the true nature of the matters that were being investigated by the NCAA.

29. This deceitful strategy involved having Coach Freeze, AD Bjork, and other members of the Ole Miss Athletics Department tell sports journalists “off the record” that the “majority,” “most,” or “almost all” of the NCAA’s allegations were aimed at Coach Nutt and his staff and that the NCAA’s charges had little, if anything, to do with Coach Freeze. As further alleged below, Coach Freeze personally carried out this part of the strategy at various times from 2014 to 2017, reaching new heights when Coach Freeze courted the entire 2016 recruiting class under false and misleading pretenses.

30. On October 2, 2014, citing multiple unnamed sources, a nationally-known sports journalist, referred to herein as Journalist #1, broke the story about the scope of the NCAA’s investigation of Ole Miss. In this news story, Journalist #1 wrote that one source “with knowledge of the probe” said “the current football staff of head coach Hugh Freeze is not believed to be implicated in any major violations, and that much of the football inquiry dates back to actions by a previous Ole Miss staff.”² It is now clear that Journalist #1’s unnamed sources gave him false and misleading information. The sources who lied to Journalist #1 before he wrote this story did so for the purpose of creating a false public narrative that would deflect the heat created by the NCAA investigation from Coach Freeze to Coach Nutt.

² Many seasoned journalists, including Journalist #1, will rarely, if ever, link an “off the record” source to a specific organization. This practice is designed to protect sources by making it more difficult for someone to determine the source’s identity. Plaintiff alleges, on information and belief, that Journalist #1’s unnamed sources for this story were senior members of the Ole Miss Athletics Department.

31. Standing on their own, each false, misleading and defamatory statement made by Coach Freeze and other members of the Athletics Department from 2014 through 2017 harmed Coach Nutt's reputation as a football coach and is a clear and deliberate breach of Section 8 of the Severance Agreement. Collectively, the Defendants' deliberately false and misleading statements also constitute a blatant violation of SEC Bylaw 10.2 (prohibiting recruiting using false statements or false pretenses), and an equally egregious violation of the Ole Miss Code of Ethics and Conduct (requiring employees to act with "fairness, honesty, accuracy, and respect for the rights of others").

Ole Miss Wrongly Declines Various Requests for Disclosure of the NOA

32. The other key component of the University's false and misleading PR scheme involved Ole Miss going to great lengths to resist the predictable public records requests from journalists who were seeking to discover the details of the NCAA's investigation. In several instances between 2014 and 2017, the University's "deny/delay/distract" approach to handling public records requests on this topic was evidenced by their assertions of various exemptions and redactions that were for the most part based on unprecedented and/or specious legal positions, the University's self-serving view of public policy, and other clear departures from the letter and spirit of the Mississippi Public Records Act. Ole Miss's wrongful refusal to disclose the NOA until May 27, 2016 was a crucial component of its strategy to protect its head football coach at all costs knowing full well that its deceptive communications would do immeasurable damage to Coach Nutt's reputation.

Coach Freeze's Behavior in Defense of his Self-Image is Consistent with his Role in the University's Smear Campaign

33. It is common knowledge among sports journalists that Coach Freeze does not take kindly to criticism. Since the moment the NCAA investigation was first made public, Coach Freeze has distinguished himself from other Division 1 head football coaches by: (a) consistently

exhibiting behaviors that are massively defensive;³ (b) going to extraordinary lengths through social media and otherwise to promote his self-image as a deeply spiritual Godly man who's done nothing wrong and is being persecuted;⁴ and (c) attempting to cultivate personal relationships with sports journalists for the purpose of promoting his self-image through positive news stories and, as further alleged below, exploiting their trust and deliberately misleading them into tweeting and writing news stories that furthered Coach Freeze's agenda. These personal characteristics contributed to Coach Freeze's decision to play the leading role in the self-serving smear campaign that foreseeably damaged Coach Nutt's reputation.

AD Bjork and Coach Freeze Failed to Inform Chancellor Vitter About the Long-Running “Off the Record” Smear Campaign or Coach Freeze’s Intention to Mislead the 2016 Football Recruiting Class in a Similar Fashion

34. Leading the University through the crisis created by the NCAA investigation was particularly challenging for Chancellor Vitter, who assumed his new duties on January 1, 2016, long after AD Bjork, Coach Freeze, and Campbell had developed their deplorable PR strategy. AD Chancellor Vitter had only been on the job for three weeks when, unbeknownst to him, Coach Freeze took the Athletics Department's long-running smear campaign to an even more egregious level. Bjork and Coach Freeze deliberately did not inform Chancellor Vitter of their deceptive PR strategy or of their intention to escalate the misinformation campaign to protect the University's investment in football recruiting.

³ "If you have facts about a violation, send it to compliance@olemiss.edu," Freeze wrote in a now-deleted tweet. "If not, please do not slander these young men or insult their family."

⁴ Late last year, a four-star prospect being recruited by Ole Miss said: "Well, Coach Freeze told me when you're that big and out there with faith in Christ, he's like, 'What do you expect? Jesus got nailed to the cross.'" SB Nation, Dec. 28, 2016.

Coach Freeze Reaches Out to Sports Journalists as News of the Recently-Issued NOA Threatens to Create an Unanticipated Recruiting Disaster of Epic Proportions

35. Even the best college football coaches in the country can't develop winning teams without great players. For that reason, an effective recruiting program is the lifeblood of every successful college football team. Statistically speaking, there is a strong correlation between recruiting programs that consistently sign the highest-rated prospects and the number of games the team wins. That, in turn, correlates to how long the head coach will keep his job and whether he will receive additional financial incentives. As Ole Miss approached the final lap of the recruiting season in late 2016, nobody understood these truisms better than Coach Freeze.

36. The grand finale of the Ole Miss football recruiting season was an epic recruiting event in Oxford. Coach Freeze and his staff invited their most coveted prospects to this event, which capped off the single-biggest investment in football recruiting that Ole Miss had made during Coach Freeze's five-year tenure as head coach.⁵

37. This extraordinary recruiting event was scheduled and planned well in advance, and the logistics of the event required that it had to occur, as scheduled, on Friday, January 29, 2016 through Sunday, February 1, 2016.

38. The NCAA delivered the NOA to Ole Miss on or shortly before January 22, 2016. For Coach Freeze, the timing could not have been worse. The possibility of the media reporting on this development on the eve of the upcoming recruiting event was, in his view, a looming crisis. Coach Freeze knew that news stories revealing the truth about the contents of the NOA had the potential to nullify the enormous investment that he and his staff had made in recruiting the most talented prospects in the nation . Given the high expectations that had been set for the 2016 Ole

⁵ In 2016, the Athletics Department's spending on recruiting exceeded \$1.2 million, with the football program accounting for the largest portion.

Miss class, Coach Freeze was keenly aware that a catastrophic failure to meet those expectations would be an unthinkable personal embarrassment.

39. With these things in mind, during the ten days leading up to the crucial weekend recruiting event, Coach Freeze initiated “off the record” conversations with numerous sports journalists for the specific purpose of creating multiple false and misleading news stories, tweets, and other social media comments supporting the above-referenced false narrative, *i.e.*, that the NCAA’s focus was on the former football coaching staff and Houston Nutt in particular; it had little, if anything to do with Coach Freeze (hereinafter referred to as “the false narrative”). Examples of these false and misleading phone conversations and the damaging effects they had on Coach Nutt’s reputation are set forth below.

40. In a 12-minute telephone conversation that Coach Freeze initiated with Journalist #2 beginning at 2:18 p.m. on January 21, 2016, Coach Freeze told the journalist a version of the false narrative. The following week, Journalist #2 tweeted: “Source: Majority of alleged football violations at Ole Miss tied to Saunders/Academics/previous staff, not current coaching staff.” Shortly thereafter, the bold-face text used in this message was reinforced when a large photograph of Houston Nutt was posted beneath the original tweet. The false narrative Journalist #2 tweeted was re-tweeted *183 times*.

41. In a 7-minute telephone conversation that Coach Freeze initiated with Journalist #3 beginning at 5:24 p.m. on January 21, 2016, Coach Freeze told the journalist a version of the false narrative. The following week, Journalist #3 tweeted: “The other football-related stuff dates back to the Houston Nutt era. Hearing that stuff is six years old.” Replying to this tweet, another person tweeted: “I say give ole Houston a lifetime show cause and be done with it.” Journalist

#3's original tweet was re-tweeted 81 times. Consistent with his tweet, Journalist #3 posted a news story the same day that included the following statement:

A "very minimal number" of allegations are tied to the current football staff, and those are related to former Ole Miss offensive tackle Laremy Tunsil. . . . Most of the football-related allegations, the source said, date back to Houston Nutt's tenure. Nutt coached Ole Miss from 2008 through 2011.

Associated Press, January 29, 2016.

42. In a 5-minute telephone conversation that Coach Freeze initiated with Journalist #4 beginning at 3:15 p.m. on January 29, 2016, Coach Freeze told the journalist a version of the false narrative. An hour and twenty minutes later, Journalist #4 posted news story that included the following statement:

Multiple sources tell FOX Sports that the majority of the allegations stem from women's basketball and track as well as from incidents occurring with the previous Rebels football staff from the Houston Nutt era, and that the Notice of Allegations does not contain anything that surprises the program.

Fox Sports, January 16, 2016, 4:35 p.m.

At approximately the same time, Journalist #4 tweeted: "SOURCES: Much of NCAA's [#OleMiss](#) case regarding Freeze regime involves the Tunsil case (he was suspended 7 gms)"

43. In a 4-minute telephone conversation with Coach Freeze initiated by Journalist #5 beginning at 2:40 p.m. on January 29, 2016, Coach Freeze told the journalist a version of the false narrative. Forty minutes later, in a 7-minute telephone conversation that AD Bjork initiated with the same journalist, AD Bjork conveyed a similar version of the false narrative. At 5:35 p.m., Journalist #5 posted the following AP story, which was then republished in countless U.S. newspapers:

Some of the allegations regarding the football program date back to previous coach Houston Nutt, but others involve current coach Hugh

Freeze's tenure, a person familiar with the investigation told The Associated Press on Friday.

The person spoke on condition of anonymity because the investigation is ongoing. . . .

The announcement was not unexpected but comes at a bad time for the football program, which is **trying to lock down one of the nation's most highly regarded recruiting classes before national signing day on Wednesday.**

Associated Press, January 29, 2016, 5:35 p.m.

44. In a 13-minute telephone conversation between Campbell and Journalist #6 (ESPN) beginning at 10:48 a.m. on January 29, 2016, Campbell told the journalist a version of the false narrative. In a 7-minute telephone conversation that AD Bjork initiated later that day with Journalist #7 (also ESPN) beginning at 3:06 p.m. Bjork told the journalist a version of the false narrative. Fifteen minutes later, Journalist #7's ESPN colleague (Journalist #6, who had spoken to Campbell at 10:48 a.m.) tweeted the following message:

"I'm told the Ole Miss Notice of Allegations doesn't contain any surprises. Most of it predates Hugh Freeze and Ole Miss knew it was coming."

3:26 PM - 29 Jan 2016.

Later that afternoon, Journalist #6 posted a story that strongly reinforced the false narrative and quoted a source who had talked to his ESPN colleague (Journalist #7). The story said:

Allegations connected to Mississippi's football team largely derived from the 2008-11 tenure of Houston Nutt, sources said. Freeze was named the Rebels' coach in December 2011.

Sources told [ESPN.com](#) that the new football violations in the NCAA's report centered primarily on the Tunsil case.

"This is a fraction involving our current football staff," a source told ESPN's [Journalist #9]. "Some of those things we've already self-imposed some penalties around and already dealt with. This just happens to be part of a broader process." (emphasis added)

The NCAA has charged Ole Miss with a number of rules violations, **but sources told ESPN that many of the allegations either do not involve the football team or predate Hugh Freeze becoming the head coach.**

The timing of the notice of allegations is anything but ideal for the Rebels. National signing day is Wednesday, and **Ole Miss is hosting several recruits on campus this weekend as it tries to complete a class currently ranked No. 3 by ESPN.**

Ole Miss athletic director Ross Bjork, in a statement Friday, declined to elaborate on the allegations. **"As has been the case for the past three years, we are bound by confidentiality and cannot comment publicly on the matter," Bjork said.**

ESPN, January 29, 2016 (emphasis added).

45. \On Friday, January 29, 2016, at 1:40 p.m., Journalist #1 posted a story entitled "Sources: NCAA Formally Charges Mississippi with Rules Violations." Journalist #1 wrote that, according to sources, the NCAA had charged Ole Miss with more than 30 violations in football, women's basketball, and track and field. Journalist #1's story did not indicate how many of the alleged violations related to football. Nor did the story reveal any information about the extent to which the allegations involved the current or previous football coaching staff. Based on Journalist #1's breaking news story, the follow-up stories and tweets by journalists who had been duped by Coach Freeze and other Ole Miss sources, and the impact of Ole Miss's false narrative on sports journalists who read those stories or learned of the false narrative from their colleagues, by the time the recruiting prospects started arriving in Oxford, there was already a "perfect storm" of online, television, and radio news stories, tweets, and social media postings that reinforced and continued to spread the false narrative. This "Category 5" media storm continued to build on itself and maintained its momentum for the next few weeks – long enough for Ole Miss to hide behind the false narrative and lock down its recruiting prospects before National Signing Day.

Unsure Whether his Coveted Prospects were Convinced by the False News Stories, Tweets and Social Media Comments, Coach Freeze Personally Told at Least Four of the Prospects the Most Egregious Version of the False Narrative

46. While Ole Miss was quite successful in duping the journalists and the public at large, Coach Freeze wasn't confident that the results of the deceptive PR campaign would convince the visiting top-rated prospects not to worry about the NCAA investigation. Therefore, Coach Freeze decided to personally tell the false narrative to at least four of the prospects (and likely others) during meetings they had with Coach Freeze and others during the epic recruiting weekend. Apparently, it never crossed Coach Freeze's mind that one of the prospects who heard the false narrative directly from Coach Freeze might unknowingly "out" him during an exit interview with the media, thus destroying the confidentiality Coach Freeze had enjoyed when speaking with journalists "off the record." But that's exactly what happened.

47. Deontay Anderson, one of the most coveted prospects who attended the recruiting weekend and later signed with Ole Miss, was interviewed by ESPN staff writer Gerry Hamilton on Sunday, January 31, 2016, while Anderson was still in Oxford. Hamilton posted a news story that evening entitled "*Deontay Anderson, Top 2016 Safety, Discusses Ole Miss Visit*", which included the following quote from Anderson:

"[The notice of allegations from the NCAA] didn't affect me. I talked to Coach Freeze about it. *He said it was about things that had happened in the past before he got to Ole Miss.* I knew he would be honest with me."

(emphasis added)

48. Ole Miss made no comment about Anderson's statement and presumably decided that any comment or correction would draw more attention to the unintended "on the record" disclosure of the false narrative.

49. Deontay Anderson was not the only prospect on campus that weekend who heard the false narrative directly from Coach Freeze. At least three other prospects were told by Coach

Freeze the most egregious and defamatory version of the false narrative, *i.e.*, Coach Freeze “specifically mentioned Houston Nutt’s name when explaining . . . that the NOA involved alleged violations that occurred before Coach Freeze came to Ole Miss.”

Ole Miss Turns a Blind Eye to the Uniformly False and Misleading News Stories, Tweets, and Social Media Comments That Were Largely Attributed to Ole Miss Sources

50. No evidence whatsoever exists to show, or even suggest, that any representative of Ole Miss took any steps to correct the false narrative.

51. Defendants’ failure to correct the record was deliberate and malicious and caused further harm to Coach Nutt’s reputation.

Months Later, Journalists React with Anger and Disbelief When the Release of the NOA Makes Clear They Were Duped by the Ole Miss Athletics Department

52. After months of stonewalling, and hoping that the passage of time would mitigate the reaction of the journalists who they had lied to, Ole Miss finally released the NOA on May 27, 2016, revealing for the first time the fraud they committed against several respected sports journalists, their loyal fan base, and the 2016 football recruiting class. As reported by the *Clarion Ledger*:

“Ole Miss finally released the notice of allegations and its response to it Friday morning [May 27, 2016]. . . . Nine of the 13 allegations levied against the football program occurred under coach Hugh Freeze. Four were Level I violations, two Level II and three Level III.”

Clarion-Ledger, May 27, 2016.

53. The passage of time did not have the effect Ole Miss had hoped for. From reading the NOA, the deceived journalists quickly realized that the Ole Miss sources they had relied on had betrayed their trust. After realizing they had been manipulated and deceived by Coach Freeze and others just to protect Ole Miss’s investment in their recruiting prospects, most of the deceived

journalists were angry. Those who were not deceived directly were generally disgusted by what Ole Miss had done.

54. Some of these journalists expressed their sentiments online. For example, on May 27, 2016, one of the journalists who had been deceived by Coach Freeze in late January 2016, tweeted that Ole Miss's statements that the NOA mainly involved "previous staff at OM were false and misleading. Be careful who you believe, I guess." The same day, that journalist simply tweeted "was false, misleading and intentional." The next day, the same journalist tweeted: "Bad info, misleading report." Similarly, a highly-respected national sports journalist who had not been directly deceived by Ole Miss tweeted a comment reminding people of "when Ole Miss sources leaked to friendly reporters right before Signing Day that all this stuff was pre-Freeze" and sarcastically questioning how that could possibly be ethical.

**CAUSE OF ACTION
BREACH OF CONTRACT**

55. From and after November 26, 2011, and pursuant to the terms of the Severance Agreement, Defendants were contractually prohibited from making any statement whatsoever relative to Coach Nutt's tenure as an employee of Ole Miss that might damage or harm his reputation as a football coach. Ole Miss was contractually prohibited from making any statement whatsoever, truthful or not, that may damage or harm Coach Nutt's reputation.

56. The Defendants, in breach of the Severance Agreement, repeatedly made statements to the media and to the public in general, that were not only false and misleading, but were damaging to Coach Nutt's reputation as a football coach.

**CAUSE OF ACTION
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

57. Mississippi law imposes a covenant or duty of good faith and fair dealing in the performance and enforcement of all contracts, including the Severance Agreement. This duty is based on fundamental notions of fairness and precludes subterfuge and evasion and requires that the parties observe standards of decency, fairness and reasonableness.

58. The Defendants, in breach of the duty of good faith and fair dealing, repeatedly made statements to the media and to the public in general, that were not only false and misleading, and damaging to Coach Nutt's reputation as a football coach, but were made in bad faith, and with a purpose of avoiding responsibility for its own illegal conduct but instead to blame Coach Nutt.

**CAUSE OF ACTION
PUNITIVE DAMAGES**

59. Because the Defendants' actions were malicious, fraudulent, egregious, in bad faith and in total disregard for the rights of Coach Nutt, he is entitled to an award of punitive damages.

DAMAGES

60. As a direct result of Defendants' breach of contract and breach of the duty of good faith and fair dealing, Coach Nutt is entitled to all damages allowed under Mississippi law to include:

- a. Lost wages;
- b. Emotional distress;
- c. Embarrassment;
- d. Attorney's fees; and

e. Punitive Damages.

PRAYER FOR RELIEF

WHEREFORE, Premises Considered, Plaintiff Houston Dale Nutt, Jr. prays that this Court enter judgment against the Defendants for breach of contract in an amount in excess of the jurisdictional minimum of this Court for all costs of this action, attorney's fees, post-judgment interest and for all other relief deemed proper.

Respectfully submitted,

This 12th day of July, 2017.

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